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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 829

R. L. BRADFORD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

R. L. BRADFORD,
27 East 38th Street,
New York, N. Y.

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The present proceeding is not, as claimed by respondent, one "to reopen," but to vacate, as void, the order of the court below dismissing his appeal upon the grounds that petitioner was not afforded the assistance of counsel upon his application to proceed *in forma pauperis* as required by the sixth amendment as construed and applied by this Court in *Johnson* v. *United States*, 352 U. S. 565.

Respondent's reasons for denying the present Petition appear to be the following:

1. That the Court of Appeals stated in this proceeding that the appeal was frivolous.

That court gave no such reason when the appeal was dismissed; nor was there any duly authenticated record then, or at any other time, before said court upon which such a finding could be made.

Therefore, respondent's contention is contrary to *Farley* v. *United States,* 354 U. S. 521.

2. That various collateral attacks have been made by petitioner upon the judgment.

None of these efforts were upon the grounds here presented; and they are, therefore, immaterial.

Furthermore, respondent's contention is contrary to *Chessman* v. *Teets,* 354 U. S. 156.

3. That petitioner pleaded guilty.

If the indictment charged no offense, as claimed, petitioner could not plead guilty to anything but a lawful act. Such plea could not convert an indictment that charged no offense into one that does.

Moreover, if the proceedings in the federal court were void for any reason, the plea was void also as this Court has held many times, and particularly in *United States* v. *Morgan,* 346 U. S. 502.

4. That *Johnson* v. *United States,* 352 U. S. 565, *supra,* does not apply because lack of merit was determined solely from the record.

The so-called "record" is a myth. There never was, and never has been, any authenticated record before said Court of Appeals; and to determine the question of frivolity without a record is contrary to *Farley* v. *United States,* 354 U. S. 521, *supra.*

"Lack of merit" is a myth also because merit could not be determined without a record. Petitioner's motion included a request for an extension of time to docket the record, and if no record had been docketed there could have been none before the court.

5. That petitioner "did not apply to the Court of Appeals for appointment of an attorney until his time to docket the appeal had almost expired."

This is an admission by respondent that no record had yet been docketed, and that therefore there was no record before the court upon which it could determine the question of frivolity.

Furthermore, is an appellant to be denied the constitutional right to the assistance of counsel in a *forma pauperis* proceeding because, within the time allowed by law to docket, he asks for an extension of time therefor?

It may be said, also, that during such time petitioner was imprisoned, was without counsel, and was doing the best he could under the circumstances. His purpose in asking for counsel was to relieve himself of these disabilities.

6. That petitioner seeks to "reopen" the proceedings eight years after sentence has been fully served.

This is not a case of "reopening" a valid order, as respondent pretends, but of vacating a void one.

A void judgment may be vacated after the lapse of any time, and after sentence has been served, because of the continuing disability thereof, as this Court has specifically held in *United States* v. *Morgan, supra.*

In *Johnson* v. *United States, supra,* this Court made no exceptions or qualifications whatsoever as to an appellant's right to have the assistance of counsel in a *forma pauperis* proceeding.

If the same kind of an order of this same court was void in the *Johnson* case, it is void here.

It is respectfully submitted that the administration of justice in the federal courts is in jeopardy when the lower courts refuse or fail to follow the specific mandates of this Court.

The Indictment

Though the merits are not at issue in this proceeding, there are many decisions of this Court, and the lower federal courts, including the court below, holding that the indictment here does not charge an offense against the laws of the United States.

In such case, the indictment, the plea and judgment are void.

Petitioner has never been afforded an opportunity by any federal court to show that said indictment charged no offense, or to offer said decisions.

Instead, he was arbitrarily denied that right by said Court of Appeals while he was imprisoned, and without counsel, upon an oral cross-motion made without notice contrary to the Rules of said court and elemental principles of justice, and without any record then before the court upon which it could base any determination as to frivolity because, admittedly, the record had not yet been docketed.

This Court has held repeatedly that no one can be deprived of a right without notice and opportunity to be heard.

Respondent's contentions are themselves frivolous, and are unworthy of representatives of the Government of the United States.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari should be granted.

R. L. Bradford,
In propria persona
27 East 38th St.,
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